

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CHRISTOPHER McCULLOUGH,
#174909

PETITIONER, *

VS.

DANIEL JONES, WARDEN *

RESPONDENT, *

RECEIVED

* CASE NO. 07-307-CV-71-LUKA
AUG 17 2007

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

RESPONSE TO ATTORNEY GENERAL SECOND
SUPPLEMENTAL ANSWER

COMES NOW THE PETITIONER
CHRISTOPHER McCULLOUGH WITH AN
RESPONSE TO THE ATTORNEY GENERAL
SECOND SUPPLEMENTAL ANSWER

ARGUMENT

THE PETITIONER CHRISTOPHER MACCULLOUGH IS ENTITLED TO EQUITABLE TOLLING UNDER THE CIRCUMSTANCES OF THIS CASE PROVEN BY INDEPENDENT EVIDENCE. AS MENTIONED IN A PREVIOUS RESPONSE THE CIRCUIT COURT DID NOT NOTIFY PETITIONER OF THE CIRCUIT JUDGE FINAL DECISION ON THIS CASE.

ANYTIME A FINAL JUDGEMENT IS MADE IN AN CRIMINAL CASE IT SHOULD BE MADE BY WRITTEN ORDER AND THE DEFENDANT IS SUPPOSED TO BE ISSUED A COPY OF THE SAID ORDER.

FAILURE TO ISSUE THE DEFENDANT A COPY OF ANY ORDER OF A FINAL JUDGEMENT PREJUDICE THE DEFENDANT COMPLETELY BECAUSE IT DENIES THE DEFENDANT THE RIGHT TO CHALLENGE THE JUDGE'S FINAL DECISION ON APPEAL.

THIS PRODUCES AN PROCEDURAL DEFAULT WHICH IS ESTABLISHED BY AN PURE FACT AND NOT AN ALLEGATION.

I AM GOING TO SUBSTANTIAL SHOW THAT THE INSTANT CASE HAS MULTIPLE DENIALS OF MY CONSTITUTIONAL RIGHTS.

THESE ISSUES ARE COMPLETELY DEBATABLE, AMONG REASONABLE JURISTS, THAT A COURT COULD RESOLVE THESE ISSUES DIFFERENTLY, AND THESE ISSUES ARE ADEQUATE ENOUGH TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

I WILL START WITH THE 6TH AMENDMENT WITH THE RIGHT TO ASSISTANCE OF COUNSEL. IN THIS RULE 32 PETITION I ADMINISTERED THE FACT OF THE INEFFECTIVENESS OF MY COUNSEL. KYLA GROTT HELIN DID NOT MEET THE STANDARD OF LAW. HER PERFORMANCE WAS DEFICIENT AND NO ATTORNEY WITH THE PROPER REASONABLENESS WOULD HAVE MADE THE CHOICES THAT SHE MADE. FIRST OF ALL SHE WENT AGAINST MY REQUEST TO SHOW THE VIDEO TAPE OF THE STOPPING OF MY VEHICLE ON WHICH DISCLOSES EVIDENCE IN FAVOR OF THE DEFENDANT THAT THE LAWETT POLICE OFFICERS NEVER TOOK AN SKI-MASK OUT OF MY POSSESSION. FAILURE TO NOT SHOWING THIS VIDEO TAPE ALLOWED THE DISTRICT ATTORNEY TO ADMIT FALSE EVIDENCE IN THIS SURETY TRIAL TO BOAST THE STATES CASE TO WIT: A BLUE SKI MASK TO BE SPECIFIC. ANY TIME THE DISTRICT ATTORNEY USE FALSE EVIDENCE TO BOAST THE STATES CASE IS DEEMED INAPPROPRIATE AND THE DEFENDANT IS AUTOMATICALLY ACQUITTED. FAILURE TO SHOW THIS VIDEO TAPE PREJUDICED THE PETITIONER COMPLETELY. SHE ALSO FAILED TO OBJECT TO THE CO-DEFENDANTS CONTRADICTORY TESTIMONY. SHE DID NOT DISPUTE, CHALLENGE, OR DEBATE THE CORROBORATE EVIDENCE OF THIS TRIAL ON WHICH PREJUDICE THE PETITIONER COMPLETELY BECAUSE IT DENIED ME THE RIGHT TO CHALLENGE THIS DECISION ON APPEAL. THE ATTORNEY GENERAL STATES THAT TO STIPULATE THE FACT OF INEFFECTIVE ASSISTANCE OF COUNSEL COULD BE DONE ON DIRECT APPEAL BUT IT CANNOT BE SUFFICE IF THE TRIAL ATTORNEY IS ALSO THE ATTORNEY WHO DOES THE APPEAL. SO POST-CONVICTION RULE 32 IS THE PROPER METHOD TO BRING THIS ISSUE ABOUT.

CRIMINAL LAW 98(3)

WHERE DEFENDENT IS REPRESENTED AT TRIAL AND ON APPEAL BY SAME COUNSEL, CLAIMS OF INEFFECTIVE ASSISTANT OF COUNSEL ARE COGNIZABLE IN PETITION FOR POST-CONVICTION RELEASE, U.S.C.A. CONST. AMEND. 6 RULES OF CRIMINAL PROCEDURE RULE 32 ET SEQ. EX PARTE BESSELAAR 600 So. 2D 978, 979 (ALA, 1992.)

THEREFORE THIS ISSUE WAS PROPERLY RAISED ON POST-CONVICTION RULE 32.

THE DENIAL OF THE RIGHT OF MY 5TH AMENDMENT ALSO WAS VIOLATED BECAUSE I TOLD THE TRUTH THAT I WAS ONLY PRESENT TO SEE THE CO-DEFENDANT DO SOMETHING FOOLISH WHICH ESTABLISHES BY ME BEING PRESENT ON THIS SCENE WITHOUT THIS TESTIMONY NO REASONABLE JURY WOULD HAVE CONVICTED ME OF THIS CRIME. THE 5TH AMENDMENT SPECIFICALLY STATES THAT NO ONE SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF. THIS IS WHAT THE COURT OF CRIMINAL APPEALS BASED THEIR AFFIRMATION ON WHICH IS HIGHLY UNLAWFUL AND AN MISARRANGE OF JUSTICE.

THE DENIAL OF THE RIGHT OF THE 4TH AMENDMENT WAS VIOLATED BY UNREASONABLE SEARCH AND SEIZURE OF MY 1978 MUSTANG WAS PROPERLY RAISED ON POST-CONVICTION RULE 32 ALSO.

TO CONSUMMATE THE EFFECT OF THESE ISSUES I SHOULD HAVE BEEN NOTIFIED OF THE DISMISSAL OF THIS PETITION BY WRITTE ORDER. WITHOUT THIS NOTIFICATION IT PREJUDICED ME COMPLETELY BECAUSE IT DENIED ME THE RIGHT TO CHALLENGE THESE ISSUES ON APPELLATE REVIEW. THIS WAS AN DETRIMENTAL MISARRANGE OF JUSTICE.

I HAVE DEMONSTRATED THAT I AM ENTITLED TO EQUITABLE TOLLING. ALL THE EXHIBITS THAT WAS WRITTEN TO THE COURT TO A CRIMINAL APPEALS AND THE ALABAMA SUPREME COURT INDEED ASCERTAINS THAN ALLEGES THAT I TRIED MULTIPLE OF TIMES TO GET THE CHAMBERS COUNTY CIRCUIT COURT TO ANSWER THIS RULE 32 PETITION.

A STATE PRISONER CAN OVERCOME A PROCEDURAL DEFAULT AND THUS PROCURE FEDERAL HABEAS CORPUS REVIEW OF HIS BARRED CLAIMS, IF HE CAN DEMONSTRATE CAUSE FOR THE DEFAULT AND ACTUAL PREJUDICE AS A RESULT OF THE ALLEGED VIOLATION OF FEDERAL LAW. I HAVE UNDOUBTINGLY DONE THIS.

THE CHAMBERS COUNTY CIRCUIT CLERK HAS DEFINITELY VIOLATED THIS DEFAULT OF ME NOT RECEIVING THE FINAL NOTICE OF THIS DECISION OF THIS POST-CONVICTION RULE 32 IN HIS SWORN AFFIDAVIT. HE DISCLOSES THE FACT THAT HIS OFFICE HAS NO RECORD THAT HE SENT ME A COPY OF THIS WRITTEN ORDER. FAILURE TO DO SO HAS PREJUDICED ME TO APPELATE REVIEW OF THESE ISSUES ON APPEAL, BECAUSE BY HIM NOT SENDING ME A COPY OF THE FINAL NOTICE, MAKES THE APPELLATE TIME LAPSE WITHOUT MY KNOWING THAT IT WAS CAPABLE OF APPEALING AT THE PROPER TIME. THIS AFFIDAVIT BY MR. CHARLES STORY CONDOES MY DEMONSTRATION FOR CAUSE FOR DEFAULT. I ALSO ESTABLISHED ANOTHER MISARRANGE OF JUSTICE ON POST-CONVICTION RULE 32 THAT JUDGE RAY MARTIN GAVE AN IMPROPER JURY CHARGE ON ATTEMPTED BURGLARY 2ND WHICH IS CLEARLY ERRONEOUS BY LAW BECAUSE ATTEMPTED BURGLARY 2ND DEGREE IS NOT AN LESSER INCLUDED OFFENSE OF ATTEMPTED BURGLARY 1ST DEGREE. BY ME NOT KNOWING THAT THIS PETITION WAS DISMISSED I COULD NOT CHALLENGE THIS ISSUE ON APPEAL. THIS ISSUE ALONE WOULD HAVE REMANDED THIS CASE.

ATTORNEY GENERAL'S OFFICE WAS ESTABLISHED WHEN
THEY SEARCHED MY VEHICLE, SEARCHES AND SEIZURES

FACT THAT POLICE OFFICER,
WHILE MOVING SUSPECTS VEHICLE FROM AREA
WHERE IT WAS ILLEGALLY PARKED, OBSERVED PISTOL
IN FLOOR BOARD OF VEHICLE DID NOT PROVIDE
OFFICER WITH PROBABLE CAUSE TO SEARCH VEHICLE,
EVEN THOUGH SUSPECT HAD PRIOR FELONY CONVICTIONS
FOR SELLING CONTROLLED SUBSTANCE AND PERSONS
CONVICTED OF CERTAIN VIOLENT CRIMES WERE
PROHIBITED BY STATE FROM POSSESSING PISTOL;
SUSPECTS CONVICTION WAS NOT CRIME OF VIOLENCE,
AND HIS POSSESSION OF PISTOL WAS THEREFORE NOT
ILLEGAL. U.S.C.A. CONST. AMEND. 4 CODE 1975 13A-11-12,
13A-11-13 BEASLEY LYKES JR. V. STATE 769 So 2d 1335
(ALA. CRIM. APP. 1997.)

I DO HEREBY VERIFY THAT I WAS CONVICTED OF
RECEIVING STOLEN PROPERTY 3rd DEGREE A NON-VIOLENT
CRIME SO IT WAS NOT ILLEGAL FOR A PISTOL TO BE
IN MY VEHICLE,
SO IT SEEMS THAT THE STATE COURT ACTED OUTSIDE
OF THE SCOPE OF THE AREA OF LEGAL PRINCIPLE
THIS MAKES THE STATE COURT DECISION WAS
CLEARLY OBJECTIVELY UNREASONABLE.
PETITIONER WAS PREJUDICED BY NOT KNOWING
THE DISPOSITION OF HIS POST-CONVICTION RULES
ON WHICH ALL TIME LAPSE FOR APPELLATE REVIEW
WITHOUT PETITIONER HAVING KNOWLEDGE OF SUCH,
DISPOSITION.

IN CONCLUSION

PETITIONER HAS DEMONSTRATED ON MULTIPLE
 OF DEFAULTS, HAS STIPULATED, DISCLOSED, AND HAS
 ESTABLISHED THE DETRIMENTAL PREJUDICE THAT
 THESE DEFAULTS HAS CAUSED THE PETITIONER DEALING
 WITH THIS CASE,
 DEALING WITH THE WRIT OF HABEAS CORPUS IT IS
 WELL SETTLED THAT WHEN THE TRIAL COURT
 REFUSES TO ANSWER ANY POST-CONVICTION RULE 32
 TO CAN REQUEST A HIGHER COURT TO DIRECT
 THEM TO ORDER THE TRIAL COURT TO ANSWER
 SUCH PETITION.

I HAVE DEMONSTRATED THAT MY PETITION
 INVOLVES ISSUES THAT ARE DEBATABLE AMONG
 REASONABLE JURISTS, THAT A COURT COULD
 RESOLVE THE ISSUES DIFFERENTLY, AND THE
 ISSUES ARE INDEED ADEQUATE ENOUGH TO DESERVE
 ENCOURAGEMENT TO PROCEED FURTHER.
 THEREFORE PETITIONER CONTINUES TO REQUEST
 FOR HABEAS RELIEF AS HE SO MUCH DESERVES
 I HAVE MET THE OUTSTANDING BURDEN OF
 PROVING THE DEFAULTS AND PREJUDICES OF THIS
 CASE AND REQUEST RELIEF FOR THIS
 MISARRANGE OF JUSTICE.

RESPECTFULLY,

Signature, Christopher C. McCullough
 Christopher C. McCullough
 Pro SE

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT ON THIS THE
30TH DAY OF JULY MONTH 2007 I HAVE SENT
AN EXACT, SAME COPY OF THE FOREGOING TO:

TROY KING
ATTORNEY GENERAL
11 SOUTH UNION STREET

MONTGOMERY, ALABAMA 36130-0152
BY PLACING THE SAME IN THE UNITED
STATES POSTAL SERVICE POSTAGE PAID,

RESPECTFULLY,

Signature, Christopher C. McCullough
Christopher C. McCullough
PHO'SE

CHRISTOPHER M. CILLAGH #179929 H&C CEC
101 E. DONALDSON BOULEVARD
BESSIE H&C ALABAMA 35003



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02.2 FR 72

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
P.O. Box 711
Montgomery, AL 36101-0711

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